IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C.No.4378/2005

Sh. S.M.Taneja .....Petitioner
! through: Mr. Ritesh Bahri with Mr. Dalvinder Singh,Ms. Shikha Sapra, Advocates

VERSUS

$ State & Anr. .....Respondents
^ through: Mr. U.L.Watwani, Advocate for the State.
Mr. O.P.Saxena, Advocate for R-2.

% **D**ATE OF DECISION: 22-10-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J. (Oral)

1. Petitioner lays a challenge to the order dated 29.10.2004 passed by the learned Metropolitan Magistrate refusing to drop proceedings initiated by the MCD against the petitioner under Sections 347/461 of the DMC Act, 1957. Further challenge is laid to the order dated 10.5.2005 passed by the learned ASJ, Delhi dismissing the revision petition filed by the petitioner challenging the order dated 29.10.2004 passed by the

learned Metropolitan Magistrate.

2. A two fold contention has been urged by learned counsel for the petitioner. Firstly, in view of Section 300 of the Code of Criminal Procedure, 1973, since petitioner was tried for same offence and was acquitted by Shri Brijesh Sethi, then learned Metropolitan Magistrate, Delhi, petitioner could not be prosecuted for a second time for the same offence. Second contention urged is that the learned Revisional Court failed to apply its mind to the issue raised evidenced by the fact that after noting the contention of the petitioner, save and except reproducing the operative part of the order passed by the learned Metropolitan Magistrate, the Revisional Court has not independently applied its mind.

3. Property No.F-15, Preet Vihar, New Delhi is admittedly in a residential colony. Land use of the plot on which the building is constructed is residential. Under Section 29 of the Delhi Development Act 1957, Delhi Development Authority is empowered to prosecute a person found guilty of violating the land use as prescribed under the Master Plan or the Zonal Development Plan.

4. In the year 1994, DDA had prosecuted the petitioner for violating Section 29 of the Delhi Development Act in respect of

the property in question. As per the complaint filed by DDA, inspection carried out by its staff on 18.8.1993 had revealed a misuse of the property.

5. Vide order dated 18.9.1998, petitioner was acquitted.

6. The order dated 18.9.1998 passed by the learned Metropolitan Magistrate shows that the testimony of the Junior Engineer of DDA was disbelieved.

7. Instant complaint has been filed by Municipal Corporation of Delhi alleging violation of Section 347 of the DMC Act, 1957 which stipulates that no person shall put to use a property for a purpose other than for which plans were got sanctioned. It is alleged in the complaint that on 8.11.2002 the Junior Engineer who had visited the property at 11:00 AM had noted a complete change of user from residential to commercial, commercial activity being running of the hospital.

8. Suffice would it be to note that prosecution by DDA commenced with an inspection carried out on 18.8.1993. Instant prosecution relates to an inspection conducted on 8.11.2002.

9. I fail to understand as to how Section 300 of the Code of Criminal Procedure, 1973 is attracted. A person who is alleged to be misusing a property in the year 1993, on being acquitted can certainly be prosecuted for misuse of the property but only

where the misuse alleged is pursuant to a distinct and an independent inspection. Only then would it be a case of a person not being tried for the same offence.

10. In respect of the second contention urged by learned counsel for the petitioner, suffice would it be to state that where the Appellate or the Revisional court concurs with the reasoning of the learned Trial Judge, it is sufficient to broadly indicate the reasons for concurrence. I find nothing wrong in the Revisional Court quoting the discussion on the subject from the order of the learned Trial Judge and thereafter briefly recording that it concurs with the reasoning of the learned Trial Judge.

11. I find no merits in the petition.

12. The petition is dismissed.

October 22, 2007 **PRADEEP NANDRAJOG, J.**
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